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Brief in Reply of Plaintiff in Error

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 105.

ERNEST GATEWOOD, PLAINTIFF IN ERROR,

vs.

THE STATE OF NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

ROBERT W. WINSTON,
VICTOR S. BRYANT,
Att'ys for Plaintiff in Error.

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Can the Statute of 1905 Be Upheld Because a Part of It May Be Constitutional?

The true rule is laid down by this Court in the Connolly case, if an obnoxious section is of such import that the other sections without it would cause results not contemplated or desired by the Legislature, then the entire statute must be held inoperative. As was said in that case by Mr. Justice Harlan speaking for this Court: "If Section 9 of the Ohio statute be eliminated as unconstitutional, then the act, if it stands, will apply to live stock dealers and agriculturists. These classes would in that way be reached and fined when evidently the Legislature intended that they should not be regarded as offending against the law, even if they did combine their capital and skill in respect to their products or stock in hand. The result is that the statute must be regarded as an entirety and unconstitutional." So in this case, if Section 7 be eliminated from the Statute of 1905, the Act will apply to the two excepted classes, wholesale dealers and manufacturers, and they would be reached and punished and would be burdened with the presumptions of guilt, when the Legislature evidently intended that they should not be regarded as presumptively guilty or as offending against the law. As was well said in Stuart v. Palmer, 74 N. Y., 183, often quoted by this Court with approval, "the constitutional validity of a law is to be tested, not by what has been done under it, but what may, by its authority be done." If one were asked, what is the strength of the Statutes of 1889 and and 1905, of the North Carolina Legislature, he would undoubtedly answer, "The presumptions created in and by the 1905 Statute." Suffice it to say these do not apply to wholesale merchants or manufacturers.

We beg to quote from the printed brief filed in these

cases before the N. C. Supreme Court. It is a part of the history of this legislation that the cotton mill men and wholesale dealers made a hard fight before the Legislature of North Carolina in 1905 and won. But for the insertion of Section 7 in the Statute it would have failed of passage.

They placed their insistence upon the distinct and sole ground that, as it was necessary for them to purchase and keep on hand large quantities of supplies in their lines of business, the prices of which were subject to sudden and widely variant fluctuations, they might frequently sustain serious losses, unless they were allowed to enter the speculative market, and "hedge" or cross-trade against them by dealing in futures.

Such is the purport of the speech of Mr. W. C. Heath, ex-President of the American Cotton Manufacturers' Association, delivered before the Senate Committee, March 2, 1905, the account of which is as follows, as published in the *News and Observer* of March 3, 1905:

> "Following Mr. Guthrie, Mr. W. C. Heath, ex-President of the American Cotton Manufacturers' Association and president and secretary of five cotton mills and a wholesale grocer, spoke most earnestly and picturesquely to the committee in opposition to the bill, explaining the character of transactions on the exchange, and the methods used in business of using the future contracts as insurance against loss in the purchase or sale of large lots of raw material or provisions or manufactured goods.
>
> "He declared that the effect of the passage of the bill would be to seriously cripple industry and commercial pursuits in the State, and would drive many wholesale dealers in spot cotton to other States. As business is now conducted, continuous market quotations are a necessity to the business and manufacturing men."

To the same effect is the statement of Mr. Woodard, the

author of the bill in the House of Representatives, when it had under consideration the concurrence in the Senate amendment, on March 4, 1905, the report of which is as follows:

> "The House had somewhat of a stir on the Senate amendment to the Woodard 'bucket shop' bill, this providing that it not be construed as applying to any person, firm or corporation, or their agent, actually engaged in purchasing goods for manufacture and hedging on these sales.
>
> "Mr. Murphy of Rowan, objected as this would create a privileged class of gamblers. Mr. Woodard explained that this was not so, that it only permitted cotton mill men and wholesalers to buy and hedge on sales made. The amendment, he said, was favored by manufacturers like Senator Long and Odell and Mr. Fries of Winston. The amendment was concurred in, and the Woodard bucket shop bill needs only enrolling and ratification to be a law."

Whenever the construction of a provision of doubtful meaning in the law is to be made, the history of the provision, and the views as expressed in the debates pending its enactment, may be considered in order to arrive at the intention of the law-makers. It does not appear, however, that the proper meaning and intent of Section 7 are doubtful, but if so, the above rule may be invoked.

Mason v. Cranbury Tp. (N. J., 1902), 52 Atl. Rep., 568.

Starnes v. Hill, 112 N. C., 1 (26).

Statement of Hengham, C. J., Year Book, 33 Edw. I, p. 31.

Ash v. Adby, 3 Swanst., 664.

Ex parte Falrey, 40 Fed. Rep., 66.

U. S. v. Wilson, 58 Fed. Rep., 768.

Southerland St. Const., Vol. 2, s. 470.

On 14 June, 1906, the highest Court of Illinois decided

a case (Starnes v. People, 78 N. E. Rep., 61,) illustrating the Court's disapproval of class legislation. The Illinois Legislature had passed a statute requiring mine owners to provide a wash room for its operatives. It was urged that workers in mines were a class to themselves. But the Court of Appeals quoted with approval Judge Cooley to the effect that, "distinctions in these respects should be based upon some reasons which render them important, like the want of capacity in infants and insane persons." Why exclude from the protection of this law men employed in foundries and steel mills? the Court pertinently asks. The act act was declared to be a nullity.

We maintain that the two statutes are so blended and the intention of the Legislature to exempt mill men and wholesale dealers from the operations thereof so clear that, linked like the Siamese twins, you cannot cut the statutes in twain nor include the excepted classes, without doing violence to the legislative intent. The N. C. Legislature convenes in less than 60 days. If they desire to pass an act without strings to it, running bucket-shops and gambling from the State, there is no legal impediment to prevent.

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Durham, N. C., November 4, 1906.